APPENDIX A

Due Process Clause, Fifth Amendment to the United States Constitution:

> * * * [N]or shall any person * * * be deprived of life, liberty, or property, without due process of law * * *.

Assistance-of-Counsel Provision, Sixth Amendment to the United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right * * * to have the assistance of counsel for his defense.

§ 17b, 65 Stat. 717, 18 U.S.C.A. § 2 (1964 Cum. Supp.):

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 11:

The term "foreign government", as used in this title, includes any government, faction, or body of insurgents within a country with which the United States is at peace, irrespective of recognition by the United States.

18 U.S.C. § 371:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both. * * *

18 U.S.C. § 478:

Whoever, within the United States, with intent to defraud, falsely makes, alters, forges, or counterfeits any bond, certificate, obligation, or other security of any foreign government, purporting to be or in imitation of any such security issued under the authority of such foreign government, or any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U.S.C. § 479:

Whoever, within the United States, knowingly and with intent to defraud, utters, passes, or puts off, in payment or negotiation, any false, forged, or counterfeited bond, certificate, obligation, security, treasury note, bill, or promise to pay, mentioned in section 478 of this title, whether or not the same was made, altered, forged, or counterfeited within the United States, shall be fined not more than $3,000 or imprisoned not more than three years, or both.

18 U.S.C. § 480:

Whoever, within the United States, knowingly and with intent to defraud, possesses or delivers any false, forged, or counterfeit bond, certificate, obligation, security, treasury note, bill, promise to pay, bank note, or bill issued by a bank or corporation of any foreign country, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

18 U.S.C. § 481:

Whoever, within the United States except by lawful authority, controls, holds, or possesses any plate, stone, or other thing, or any part thereof, from which has been printed or may be printed any counterfeit note, bond, obligation, or other security, in whole or in part, of any foreign government, bank, or corporation, or uses such plate, stone,

or other thing, or knowingly permits or suffers the same to be used in counterfeiting such foreign obligations, or any part thereof; or

Whoever, except by lawful authority, makes or engraves any plate, stone, or other thing in the likeness or similitude of any plate, stone, or other thing designated for the printing of the genuine issues of the obligations of any foreign government, bank, or corporation; or

Whoever, except by lawful authority, prints, photographs, or makes, executes, or sells any engraving, photograph, print, or impression in the likeness of any genuine note, bond, obligation, or other security, or any part thereof, of any foreign government, bank, or corporation; or

Whoever brings into the United States any counterfeit plate, stone, or other thing, engraving, photograph, print, or other impressions of the notes, bonds, obligations, or other securities of any foreign government, bank, or corporation—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 324—September Term, 1964.
(Argued January 21, 1965 Decided February 26, 1965.)
Docket No. 29342

UNITED STATES OF AMERICA, *Appellee,*

v.

WILLIAM GROSH and MARIO GARCIA KOHLY, *Appellants.*

Before: MOORE, FRIENDLY and MARSHALL, *Circuit Judges.*

Appeal from a judgment of conviction after a jury trial befcre Edward Weinfeld, *Judge,* for violation of 18 U. S. C. A. §§ 371, 481 relating to conspiracy and counterfeiting of foreign currency.

Affirmed.

CHARLES J. FANNING, Assistant United States Attorney (Robert M. Morgenthau, United States Attorney for the Southern District of New York, New York, N. Y., Charles A. Stillman, Assistant United States Attorney, of counsel), *for Appellee.*

JAMES A. CARDIELLO, New York, N. Y. (Dodd, Cardiello & Blair, on the brief, Robert Morris, of counsel), *for Appellant.*

PER CURIAM:

Defendants William Grosh, an American, and Mario Garcia Kohly, a Cuban national, were indicted on one count for conspiring to violate 18 U. S. C. A. §§ 478, 479, 480 and 481, relating to the counterfeiting of foreign currency, and on one count for knowingly and without lawful authority possessing plates from which might be printed counterfeit notes of a foreign government, in violation of "Title 18, United States Code, Sections 481 and 2." After a jury trial before Judge Weinfeld, defendants were convicted on both counts and sentenced to concurrent terms of one year's imprisonment on each count.

Kohly claims to have been active in efforts to overthrow the incumbent Castro regime in Cuba, the government recognized by the United States. Grosh was his associate. They were engaged in a scheme to print counterfeit Cuban peso notes, some of which would be sold to Cuban exiles in this country, the rest to be dropped from the air into Cuba in an effort to undermine the Cuban economy. Arms for a potential invasion were to be purchased with the proceeds remaining from the sales to exiles after deduction of an amount adequate to cover costs and a profit to defendants and their accomplices. Needless to say, the Castro government had not authorized this operation; nor had the United States. Once the plates had been prepared, a printer would

be needed. Defendants made the now unfortunate choice of selecting as their printer, Harris Martin, a Secret Service undercover agent, who was promised a nice profit to make up for his lack of the patriotic zeal which they claim motivated them. Defendants were arrested while passing the plates to Martin in the lobby of the Waldorf-Astoria.

Certainly no defense counsel would be likely to interpret the citation of the well-known section 2 as meaning section 482. Even if he did, however, there could be no prejudice because section 2 (the general aiding and abetting section) need not even be charged, see *Nye & Nissen* v. *United States,* 168 F. 2d 846, 855 (9th Cir. 1948), *aff'd,* 336 U. S. 613 (1949); cf. *United States* v. *Russo,* 284 F. 2d 539, 540 n. 1 (2d Cir. 1960). Preparation to meet any charges arising under section 482 (relating to counterfeiting bank notes or bills of a bank or corporation of a foreign country) as well as section 481 could not have been prejudicial. It might be another story if, thinking "2" meant only section 2, defendants were actually tried for violation of section 482. But they were not.

Similarly lacking in merit is the attack on Judge Weinfeld's conduct of the trial. All of the claims relate to matters within the trial judge's broad discretion, and there has been no showing that it was abused.

Defendants' remaining claim is that they did not "without lawful authority . . . [possess a plate] from which . . . may be printed any counterfeit note . . . of any foreign government . . . ," 18 U. S. C. A. § 481, because they possessed the plates and would have been printing notes with the authority of a Cuban government-in-exile, albeit a self-constituted one. In disposing of this claim we need not stray far from the text of the statute. It is clear that the plates were to be used to print notes purporting to be the currency of the present Cuban government. Else, how could the notes accomplish their subversive function and how could they be salable? That government had not given its

authority. Where there is a recognized foreign government—surely included in "any foreign government"—whose notes are intended to be printed without that government's authority, we cannot doubt that the clear meaning of the statute has been met. Whether or not the present Cuban government is approved of, the purposes of the statute are served by providing this measure of protection for Cuban currency, just as with any other country's currency. As stated in *United States* v. *Arjona*, 120 U. S. 479 (1887) with respect to the predecessor of section 481, in recognition of the reciprocal obligations of international relations and intercourse among nations

> it was incumbent on the United States as a nation to use due diligence to prevent any injury to another nation or its people by counterfeiting its money, or its public or *quasi* public securities. This statute was enacted as a means to that end . . . *Id.* at 488.

Moreover, "if such securities can be counterfeited here with impunity, our own people may be made to suffer . . ." *Id.* at 487-88.

Affirmed.

Judgment

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. Daniel Fusaro
Clerk